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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,129	07/31/2003	Douglas J. Habing	128/1130US	1830
22822 7590 09/23/2009 LEWIS, RICE & FINGERSH, LC ATTN: BOX IP DEPT. 500 NORTH BROADWAY SUITE 2000 ST LOUIS, MO 63102				
EXAMINER HWANG, VICTOR KENNY				
ART UNIT		PAPER NUMBER		
3764				
NOTIFICATION DATE		DELIVERY MODE		
09/23/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/632,129

**Applicant(s)**

HABING, DOUGLAS J.

**Examiner**

VICTOR K. HWANG

**Art Unit**

3764

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 67-120 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 67-120 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 22, 2009 has been entered.

### *Response to Arguments*

2. Applicant's arguments with respect to the prior claims rejected under 35 USC 102(b) as being anticipated by *Jones*'089 (US Pat. 5,554,089) or under 35 USC 103(a) as being unpatentable over *Jones*'089 in view of *Jones*'632 (US Pat. 5,044,632) or *Voris* (US Pat. 6,394,937 B1) have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that the present claims are believed to provide that handles at the defined handle locations distinguish from mere handle locations. It is not clear that handles are positively recited. For example, in claim 1, a handle is recited in the wherein clause "wherein a user on said seat portion and facing forward on said machine **can manipulate a handle** at said first location one each of said arms to perform a push-type exercise resisted by said resistance object" and does not positively recite a handle as a part of the exercise machine. The wherein clause states an intended use of the exercise machine where the user can manipulate a handle at the first location, but not that the exercise machine actually comprises a handle at the first handle location. Similarly, a handle is not positively recited at the second handle location.

***Double Patenting***

3. Applicant is advised that should claim 81 be found allowable, claim 89 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).
4. Applicant is advised that should claim 111 be found allowable, claim 119 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 67-120 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant

art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, does not disclose or show that the first axis and second axis lie in the same plane (claims 67-98), or that the first and second pivot points lie in a generally vertical plane (claims 99-120). The specification does not describe or disclose the planar relationship between the first and second axes. The recitation on page 18, line 2, that the “axes may or may not cross depending on the embodiment” is not sufficient to lead to the conclusion that the first and second axes lie in the same plane. It should be noted that two crossing axes may lie in parallel planes or may lie in the same plane, and that two intersecting axes must lie in the same plane. There is no disclosure that the axes intersect.

Furthermore, the specification does not disclose that with regard to the plane that the axes share, that the first location of the at least two handles on each of the arms are located forward of the plane, that the second location of the at least two handles on each of the arms are located behind the plane, that the bench has a seat portion attached to the frame forward of the plane, and that the plane of motion of the at least two handle locations is generally perpendicular to the plane. The specification only refers to a plane of symmetry 960 that bisects the user or to a plane shown in Fig. 7D within which a traced arc is shown.

7. Claims 68-80 and 100-110 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 68 and 100 each recite the limitation "the plane of motion of the said at least two handle locations" in lines 1-2. There is insufficient antecedent basis for this limitation in the claims. Claims 69-80 and 101-110 depend from claims 68 or 100, and are likewise indefinite.

### ***Drawings***

8. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the handle at the first handle location and the handle at the second handle location on each of the arms comprising the same handle moved between the two locations (claims 78, 82, 92, 108, 112) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

9. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second arms moving dependently (claims 87, 117) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 67-77, 79-81, 84-86, 88-91, 93-107, 109-111, 114-116 and 118-120 are rejected under 35 U.S.C. 102(b) as being anticipated by *Webber* (US Pat. 5,683,334). *Webber* '334 discloses an exercise machine (Figs. 11 and 12) comprising a frame 22; a resistance object 20; a first arm 54D moveably attached to the frame 22 at a first pivot point 93B such that the first arm 54D traverses a fixed path about a first axis 70 permitted by the first pivot point 93B, the first arm 54D also being connected to the resistance object 20; a second arm 54E moveably attached to the frame 22 at a second pivot point 93A such that the second arm 54E traverses a fixed path about a second axis 70 permitted by the second pivot point 93A. As best can be seen in Fig. 12, the first axis 70 and the second axis 70 lie in the same plane, which the arms 54D and 54E share with the first and second axes 70. The first and second pivot points can also be considered to lie in a generally vertical plane. The second arm 54E is also connected to the resistance object 20.

Each of the arms 54D, 54E has located thereon at least two handle locations, a first location of the at least two handle locations on each of the arms being forward of the plane (lower handle location on adjustment arm 60 in Figs. 11 and 12, and analogous to handle 69 shown in other drawings), and a second location of the at least two handle locations on each of the arms being behind the plane (upper handle location on adjustment arm 60 in Figs. 11 and 12,



and analogous to handle 68 shown in other drawings). The first axis and the second axis are not parallel to each other (see Fig. 11).

A bench 32 has a seat portion 32 attached to the frame 22 forward of the plane. A user on the seat portion 32 and facing forward on the machine can manipulate a handle 69 at the first location on each of the arms 54D and 54E to perform a push-type exercise (such as shown in Fig. 6) resisted by the resistance object 20. A user on the seat portion 32 and facing backward on the machine can manipulate a handle 68 at the second location on each of the arms 54D and 54E to perform a pull-type exercise (such as shown in Fig. 7) resisted by the resistance object.

With regard to claim 91, a handle 68 at the first location on each of the arms 54D and 54E can trace a first arc when pushed and a handle 69 at the second location on each of the arms 54D and 54E can trace a second arc when pulled.

With regard to claims 68 and 100, as best understood, the plane of motion of the at least two handle locations can be considered to be generally perpendicular to the plane or to the generally vertical plane.

With regard to claims 69, 88, 101 and 118, the first and second arms 54D and 54E rotate relative to the frame 22.

With regard to claims 70, 71, 95 and 102, the handle at the first location traverses a guided path to perform the pull-type exercise and the handle at the second location traverses a different guided path to perform the pull-type exercise. The paths can be fixed paths, as determined by the intended use of the user.

With regard to claims 72-75, 81, 89, 103-105, 111 and 119, the machine can be used wherein the push-type exercise comprises a converging exercise, such as a chest exercise, and

the machine can be used wherein the pull-type exercise comprises a diverging exercise, such as a rowing exercise.

With regard to claims 76 and 106, the resistance object 20 resists the push-type exercise in the same direction as the resistance object 20 resists the pull-type exercise.

With regard to claims 77, 86, 107 and 116, the first arm 54D and second arm 54E each move independently of the other (col. 6, lines 40-44).

With regard to claims 79, 84, 93, 109 and 114, the handle 69 at the first location and the handle 68 at the second location on each of the arms 54D and 54E comprise different handles.

With regard to claims 80, 85, 110 and 115, the movement of the handle 68 at the second location causes movement of the first handle 69 at the first location one each of the arms 54D and 54E.

With regard to claims 90, 94, 98 and 120, the seat portion 32 can be in generally the same horizontal position when the user faces forward as when the user faces backward.

With regard to claims 96 and 97, the resistance object 20 comprises a weight stack 20 which is a weight and considered an inertial resistance object.

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 78, 82, 83, 92, 108, 112 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Webber* (US Pat. 5,683,334). *Webber*'334 has been discussed above, and such discussion is incorporated herein. *Webber*'334 discloses the invention as claimed except for the handle at the first handle location and the handle at the second handle location one each of the arms comprising the same handle moved between the two locations (claims 78, 82, 92, 108 and 112).

*Webber*'334 discloses alternative handle configurations in the drawings of Figs. 8-10. At least the configuration shown in the drawing of Fig. 10 permits the handles 68 and 69 to be switched between first and second locations such that handle 68 is in the first location forward of the plane and handle 69 is behind the plane. The three pivots 64A, 64B and 64C permit the locating the handles 68,69 to various positions.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first and second handle locations on the arms of *Webber*'334 with the same handle moved between the two locations, since *Webber*'334 discloses alternate handle arrangements to allow a user to move the adjustment arm 60 in all directions with greater freedom of movement (col. 6, lines 18-39).

14. Claims 87 and 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Webber* (US Pat. 5,683,334) in view of *Jones* (US Pat. 5,554,089). *Webber*'334 has been discussed above, and such discussion is incorporated herein. *Webber*'334 discloses the invention as claimed except for wherein the first arm and the second arm move dependently. *Jones*'089 discloses an exercise machine comprising first and second arms 20,21 moveably attached to a

frame 12 to pivot about respective first and second axes 26,27. The first and second axes 26,27 lie in the same, generally vertical plane and are not parallel to each other. The first and second arms 20,21 can be moved by a user 13 seated on a seat 18 to perform converging and diverging exercises.

The first and second arms 20,21 are shown in the drawings to each move independent of the other. *Jones '089* teaches that although such independent motion is shown and is preferred so as to enable the exerciser to perform simultaneous or alternative independent exercise of both arms, it is also to be understood that the levers may be operatively connected in a manner which would require simultaneous raising of both arms (col. 5, lines 8-19).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first and second arms of *Webber '334* with dependent movement, since *Jones '089* teaches that dependent movement of otherwise independent arms is a known alternative to require simultaneous movement of both arms. This is a technique known in the exercise art that provides a weaker limb with assistance from a stronger limb in completing an exercise movement.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Brangi* (US Pat. 5,250,013), *Jones* (US Pat. 5,342,270), *Chang* (US Pat. 6,824,505 B1), *Notz* (ES 2 028 738 A6), *Schweiger* (AT 397 619 B) and *Yi-Jin* (TW 317755) disclose exercise machines having structure relevant to the invention as claimed.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR K. HWANG whose telephone number is (571) 272-4976. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn H. Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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